

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

U.S. BANK NATIONAL ASSOCIATION, as §
Securities Intermediary, §
§ Plaintiff, §
§ v. § **CASE NO. 14-CV-562**
§
SUN LIFE ASSURANCE COMPANY OF §
CANADA, §
Defendant. §
§

NOTICE OF APPEAL OF SUN LIFE ASSURANCE COMPANY OF CANADA

Notice is hereby given that Sun Life Assurance Company of Canada (“Sun Life”) appeals to the United States Court of Appeals for the Seventh Circuit from this Court’s order in the above-captioned case dated December 22, 2015, which entered judgment in plaintiff’s favor as to the subjective prong of plaintiff’s bad faith claim, the only remaining issue for trial. [D.E. 113] The December 22, 2015 order, therefore, brought forward and made final all of the Court’s earlier orders, including but not limited to (1) the Court’s order dated June 10, 2015, which entered judgment on the pleadings in plaintiff’s favor as to plaintiff’s breach of contract claim and Sun Life’s counterclaims [D.E. 55], and (2) the Court’s order dated October 28, 2015, which entered judgment *sua sponte* in plaintiff’s favor as to the objective prong of plaintiff’s bad faith claim and plaintiff’s statutory interest claim [D.E. 103]. *See* 28 U.S.C. § 1291.

While the issue of plaintiff’s entitlement to attorney’s fees remains pending before the Court, Sun Life is filing this notice of appeal because any future order on plaintiff’s application for attorney’s fees is construed as a separately appealable order and “the pendency of a ruling on an award for fees and costs does not prevent, as a general rule, the merits judgment from becoming final for purposes of appeal.” *Ray Haluch Gravel Co. v. Cent. Pension Fund of Int’l Union of Operating Engineers & Participating Employers*, 134 S. Ct. 773, 187 L. Ed. 2d 669 (2014); *see also Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988) (a decision on the merits is a “final decision” under § 1291 even if the award or amount of attorney’s fees for the litigation remains to be determined).

Respectfully submitted,

Dated: January 7, 2016

/s/ John M. Bloor

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this date I caused a true and correct copy of the foregoing to be filed via the Court's ECF system, which will provide notice to:

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